

JERRY F. COSTELLO

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Congress of the United States'
House of Representatives
Washington, DC 20515-1312

September 22, 2003

Bryant L. VanBrakle
Secretary
Federal Maritime Commission
800 North Capitol Street, NW
Washington, D.C. 20573

Dear Secretary VanBrakle:

It is my understanding that UPS has filed an exemption from the prohibition on Non-Vessel Operating Common Carriers (NVOCCs) from entering into confidential contracts with their customers. Due to the operations characteristics of UPS and recent developments within the ocean shipping marketplace, the current regulatory scheme governing NVOCCs should be revised. I strongly support the UPS petition currently pending before the FMC.

During consideration of the Ocean Shipping Reform Act (OSRA) revisions of 1998, Congress considered all aspects of the ocean shipping industry, including the role of NVOCCs. Based on the nature of ocean shipping at the time, Congress determined that NVOCCs should be regulated differently than vessel operators. In the late 1990's, most NVOCCs were small enterprises that neither owned ocean vessels, nor the cargo being shipped. In order to protect shippers and to guarantee liability coverage, Congress determined that NVOCCs should operate under a published tariff system when dealing with their customers.

However, the state of the U.S. ocean shipping industry has changed dramatically since the passage of OSRA. There has been unprecedented consolidation among ocean carriers resulting in the loss of U.S. flagged carriers. In an effort to offer customers a full range of services, these carriers have created vertically integrated logistics companies that now compete with NVOCCs.

UPS operates a highly sophisticated, integrated and intermodal transportation network, which includes air, rail, surface and NVOCC transportation. It is deemed a "carrier" in the surface and air freight industries. Furthermore, UPS makes significant annual capital investments to its' asset-based transportation infrastructure. These facts alone set UPS apart from the companies that first raised concerns about the regulatory status of NVOCCs.

The UPS petition, citing the recent evolution of the ocean shipping marketplace, is precisely the reason Congress granted such broad exemption authority to the FMC. While anticipating dramatic changes in the ocean shipping industry with the passage of OSRA, Congress did not contemplate how quickly the market could adapt to these changes. By granting this petition, the FMC will acknowledge these changes, level the playing field between NVOCCs and vessel operators, and ultimately benefit shipping consumers around the world.

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I am hopeful the FMC will give the UPS petition its' highest consideration and render a decision based on the merits of the case.

Sincerely,

A handwritten signature in black ink, reading "Jerry F. Costello". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline that extends to the right.

Jerry F. Costello
Member of Congress

JFC/hl